DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
1998 Biennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	))))	MM Docket No. 98-35

RECEIVED
JUL 21 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF CBS CORPORATION

Howard F. Jaeckel
51 West 52 Street
New York, New York 10019

Attorney for CBS Corporation

July 21, 1998

No. of Copies rec'd 0+4
List ABCDE

HFJ/26730

TABLE OF CONTENTS

SUMMARY

Broadcasters today face a daunting array of competitive challenges, including among others a growing abundance of terresertial and satellite-based multichannel services; the entry of extraordinarily well-financed telephone companies into the business of video distribution; the imminent conversion of television service from analog to digital transmission; and the exploding development of computer-based information and entertainment services, and of information delivery to the home via the Internet. If free broadcasting is to be preserved as a vital force in this country's media landscape -- an objective we believe to be of the utmost public importance -- broadcasters must be permitted to achieve ownership efficiencies essential to effective competition.

The need for the Commission regularly to reevaluate its ownership regulations to ensure that broadcasters are not needlessly being prevented from achieving such efficiencies lies at the heart of the biennial review requirement of Section 202(h) of the Telecom Act. In this proceeding, we urge the Commission to subject its national television ownership and dual network rules to the searching, zero-based reexamination intended by the statute. Because the rules undermine the ability of free over-the-air television to weather the competitive challenges of today's video marketplace -- and do so without being necessary to protect competition or diversity -- they disserve the public interest, and should be repealed.

The national television ownership rule is a stark example of a regulation which restricts broadcasters from realizing the benefits of group ownership without any defensible public interest rationale. Analysis of every market in which broadcast stations compete furnishes clear and convincing proof that there is no economic justification for the rule. The

only markets that have any possible bearing on the rule, the national advertising market and the market for national exhibition rights to video programming, are far too unconcentrated to justify any kind of structural intervention by the government. And the fact that a media outlet located in a particular community may be jointly owned with sources in other markets has no bearing on the diversity of viewpoints available to that community.

The Commission itself has repeatedly found that the national television ownership rule is unnecessary to protect competition and diversity, and hinders broadcasters from achieving economic efficiencies. Given the clear mandate of Section 202 (h) of the Telecom Act, it would therefore be manifestly arbitrary and capricious for the Commission to fail to take some action concerning the rule in this proceeding. Adoption of the Commission's 1995 proposal incrementally to raise the national audience reach limitation to 50 percent would at least be a step in the direction of reducing the tension between the Commission's repeatedly expressed views concerning the lack of utility of the rule and its continued retention. It is clear, however, that the record before the Commission amply justifies total repeal.

Pursuant to the mandate of Section 202 (h), CBS likewise urges repeal of the dual network rule in its entirety on the ground that it constitutes yet another unnecessary restraint on the ability of broadcasters to achieve ownership efficiencies which would enhance their ability to compete with their multichannel rivals. Antitrust enforcement under the Clayton Act would be entirely sufficient to identify any anticompetitive concerns that might arise in the context of particular business arrangements in a less regulated marketplace environment.

Given the threatened economic health of the existing broadcast networks, there is no legal or public policy justification for denying the "emerging" networks, and the "major" networks, the ability to take advantage of economic efficiencies of common ownership that could only enhance their abilities to survive and thrive in the increasingly competitive media marketplace. This is especially so given the disparate regulatory treatment afforded to other media and non-network program distributors which provide analogous program services.

For example, under the Commission's present regulations, the corporate parents of broadcast networks are free to own highly profitable cable networks. And, of course, there is no per se restraint against the acquisition of a broadcast network by a cable network's owner. Yet the dual network rule would rule out even the combination of a "major" broadcast network with a financially struggling "emerging" network. Thus, the dual network rule is not only a regulatory anomaly, but irrationally discriminates against broadcasting as opposed to cable, thereby imposing another handicap on free over-the-air broadcasters in their efforts effectively to compete with other media.

Moreover, in view of the diminishing differences between networking and syndication, limiting the ownership of more than one broadcast network while freely allowing all network companies to own or acquire syndication operations is increasingly irrational. The Commission's current rules, while appropriately not restricting syndication by network companies, prohibit the combination of any of the four major networks even with an emerging network that, as of the adoption of the Telecom Act, provided only "four... hours of programming per week on a national basis pursuant to network affiliation arrangements [with stations reaching 75 percent of the country.]" Almost every major syndicator produces at least four hours of programming per week with at least this audience reach and yet remains uncovered by the rule, because it distributes its programs pursuant to syndication rather than station affiliation arrangements. Therefore, prohibiting the merger of a major and emerging network -- while allowing each type of network to own syndication operations -- is a striking example of regulatory inconsistency.

Repeal of the dual network rule would not adversely affect competition in either of the economic markets relevant to the rule -- i.e., the national advertising market and the program production market. The Commission's proposed definition of a national market for video advertising -- including only advertising supplied by broadcast networks, syndicators, and cable networks -- is clearly overly narrow for several reasons. First, the Commission's decision to exclude from its national video advertising market national spot advertising carried by broadcast stations and cable systems cannot be justified. Furthermore, evidence regarding the substitution among national advertisers of broadcast network, broadcast television spot, syndication, cable network, cable spot, radio spot, newspaper, outdoor and direct mail advertising decisively shows that the Commission's tentative decision to include only three of these outlets in its posited national advertising market is dramatically underinclusive.

When the product market is limited to include video advertising only -- but broadcast and cable national spot advertising are realistically included within that category -- levels of current concentration are at levels considered low by the DOJ/FTC Merger Guidelines. And a properly defined national advertising market -- one which includes not only national video advertising but newspapers, magazines, radio, direct mail, outdoor, and yellow pages -- is remarkably unconcentrated.

Similarly, it is clear that the dual network rule is unnecessary to protect competition in the program production market. Thus, a study cited by the Commission in its decision repealing the prime time access rule ("PTAR") found that the video entertainment programming purchased by each of the three traditional networks in 1994 accounted for only approximately 9.4 percent of the aggregate expenditures on video programming in the United States, after taking into account distribution fees associated with syndicated programming and home video. Adding the 5.6 percent of all such expenditures accounted for by the Fox Network during that year would lower the per major network average to 8.4 percent. As the Commission stated in its PTAR decision, "[t]hese market shares indicate that demand for video programming is not concentrated, and that the networks clearly cannot be said to exercise market power in the video programming production market, either individually or together." In sum, it is clear that both the national advertising market and the program production market are sufficiently unconcentrated so as not to warrant a per se prohibition of any and all mergers between certain networks; antitrust enforcement under the Clayton Act can safely be relied upon to prevent any possible abuse.

In our view, the consolidation in radio ownership which has taken place since the Commission's liberalization of its local radio ownership rules has been a beneficial one, which has markedly improved the financial health of the radio industry. Moreover, when properly defined, the local advertising markets in which radio stations compete remain robustly competitive. As for program diversity, an FCC staff report shows that there has been no downward trend in the number of distinct radio formats available to listeners since enactment of the 1996 Telecom Act. While we do not call for further relaxation of the existing local ownership limits at this time, the record to date clearly indicates that the benefits anticipated by the Congress in liberalizing the rules are being realized.

Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
1998 Biennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	))))	MM Docket No. 98-35

COMMENTS OF CBS CORPORATION

CBS Corporation ("CBS"), by its attorneys, hereby respectfully submits its comments in response to the Notice of Inquiry ("Notice") issued by the Commission in the above docket.

In adopting the Telecommunications Act of 1996, Congress directed the FCC to review its broadcast ownership rules every two years, and "repeal or modify any regulation it determines to be no longer in the public interest."[1] Responding to this mandate, the instant Notice seeks comment on the continued necessity of each of the Commission's ownership rules which is not already the subject of review in another proceeding.[2] The Commission also invites comment on the impact of the ownership rule revisions it has already adopted pursuant to the Telecom Act. In particular, the Commission solicits views on the effect of increases in the local

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(h) (1996) (the "Telecom Act").

[2] Rules already being examined in other proceedings include the television duopoly and television/radio cross-ownership ("one-to-a-market") rules. Notice at ¶9.

radio ownership limits on competition and diversity, and on whether consolidation in the radio industry has resulted in economic efficiencies.

In these comments, CBS calls for the repeal of two of the Commission's existing ownership regulations: the national television ownership rule and the dual network rule. As indicated below, we believe that the primary effect of these provisions is to prevent broadcasters from realizing ownership efficiencies necessary to effective competition with their multichannel rivals. Because the rules undermine the ability of free over-the-air television to weather the competitive challenges of today's video marketplace -- and do so without being necessary to protect competition or diversity -- they disserve the public interest.

We also discuss in these comments the impact of the revisions adopted by the Commission to its local radio ownership rules pursuant to the Telecom Act. In our view, the consolidation in radio ownership which has taken place since the liberalization of those rules has been a beneficial one, which has markedly improved the financial health of the radio industry. Moreover, the local advertising markets in which radio stations compete -- which, when properly defined, include not only broadcast and cable television, but newspapers, magazines, outdoor advertising, the yellow pages and direct mail -- remain robustly competitive. While we do not call for further relaxation of the existing local ownership limits at this time, the record to date clearly indicates that the benefits anticipated by the Congress in liberalizing the rules are being realized.

INTRODUCTION

In its 1991 study of the video marketplace, the Commission staff predicted that broadcast television would face "intensified competition as alternative media, financed not only by advertising but also by subscription revenues, and offering multiple channels of programming, expand their reach and their audience."[3] The study observed that "broadcast networks and their affiliates have been the big losers" in this competition so far,[4] and predicted that "viewers who do not subscribe to cable or other multichannel media will be made worse off by a decline in the quantity and quality of broadcast service."[5]

Today, it is even more obvious that broadcasters face a daunting array of competitive challenges: a growing abundance of terresertial and satellite-based multichannel services, both competing for audiences and advertising dollars, and rapidly deploying digital technology to expand and enhance their program offerings; the entry of extraordinarily well-financed telephone companies into the business of video distribution; the marketplace uncertainty and cost of the imminent conversion of television service from analog to digital transmission; the anticipated migration of radio service to digital audio broadcasting; and the exploding development of computer-based information and entertainment services, and of information delivery to the home via the Internet. If free broadcasting is to be preserved as a vital force in this country's media

---

[3] Broadcast Television in a Multichannel Marketplace, Office of Plans and Policy Working Paper No. 26, DA 91-187, 6 FCC Rcd. 3996, 3999 (1991) ("OPP Report").

[4] Id. at 4000.

[5] Id at 4002.

landscape -- an objective we believe to be of the utmost public importance -- broadcasters must be permitted to achieve ownership efficiencies essential to effective competition.

The need for the Commission regularly to reevaluate its ownership regulations to ensure that broadcasters are not needlessly being prevented from achieving such efficiencies lies at the heart of the biennial review requirement of Section 202(h) of the Telecom Act. In this proceeding, we urge the Commission to subject its national television ownership and dual network rules to the searching, zero-based reexamination intended by the statute. Viewed from this perspective, it is clear that there is no justification for retention of those rules.

I. THE NATIONAL TELEVISION OWNERSHIP RULE

The national television ownership rule is a stark example of a regulation which restricts broadcasters from realizing the benefits of group ownership without any defensible public interest rationale. Analysis of every market in which broadcast stations compete furnishes clear and convincing proof that there is no economic justification for the rule. There is no market, no matter how broadly or narrowly defined, that would be jeopardized by its repeal. Moreover, elimination of the rule would have no impact on diversity; the fact that a media outlet in a particular locale may be jointly owned with sources in other markets obviously has no bearing on the variety of viewpoints available to that community.

A. History of the Rule

When the Commission formally adopted its national ownership rules (the "Seven Station Rule") in 1953, its stated objective was to further its policy of "diversification" and to "implement the Congressional policy against monopoly."[6] In reviewing that decision three decades later, the Commission observed:

> "That the Seven Station Rule promotes or is integral to genuine diversity in the expression of viewpoints, and prevents anticompetitive activity, was assumed [by the Commission in 1953], but this assumption was not based on hard evidence in the record."[7]

The Commission concluded in this 1984 review that there was "little possibility that repeal of the rule could cause competitive or diversity harm," and that "licensees should be afforded the opportunity to exploit any possible efficiency from group ownership."[8] At the same time, the Department of Justice concluded that "elimination of the rule [would] pose[] no risk in any market relevant to antitrust analysis,"[9] and the National Telecommunications & Information Administration also advocated immediate repeal of the national multiple ownership rules, observing that both "First Amendment diversity and economic diversity will be protected."[10]

---

[6] Amendment of Rules and Regulations Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, 18 FCC 288 (1953).

[7] Report and Order, Amendment of Commission's Rules Relating to Multiple Ownership, 100 FCC 2d 17, 24 (1984) ("Multiple Ownership").

[8] Id. at 46.

[9] Reply Comments of DOJ, Gen. Docket No. 83-1009, at 1.

[10] Reply Comments of the NTIA, Gen. Docket 83-1009, at 6.

Also cited in the proceeding was the finding of the Commission's Network Inquiry Special Staff that national ownership rules do not protect either competition or diversity.[11]

After its 1984 review of the Seven Station Rule, the Commission concluded that changes in the television marketplace -- both the increase in the number of stations and the emergence of cable -- had rendered the national ownership rule unnecessary.[12] The Commission further found that the rules actually disserved the public by impeding the realization of economies of scale and other benefits of group ownership. On this basis, the Commission decided to increase the maximum number of jointly owned stations from seven to 12 for a transitional six-year period, after which the rule would "sunset" entirely.[13] On reconsideration, the Commission removed the automatic sunset, but reaffirmed its fundamental conclusion that "the total elimination of a presumptive national ownership rule would benefit the public interest [and] would not contravene our traditional policy objectives of promoting diversity and preventing undue economic concentration."[14] The Commission also established a national audience reach cap of 25 percent of television households, and added special provisions permitting somewhat higher levels of ownership where minority-controlled entities were involved.[15]

---

[11] Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation, Vol I at 16-17 (1980).

[12] Multiple Ownership, supra, 100 FCC 2d at 18-20.

[13] Id.

[14] Memorandum Opinion and Order, Amendment to Commission's Rules Relating to Multiple Ownership, 100 FCC 2d 74, 97 (1984) ("Multiple Ownership Reconsideration").

[15] Id.

In a later rulemaking proceeding to consider further relaxation of the national television ownership rule, the Commission in 1995 again stressed its view that liberalization would have no adverse impact on competition or diversity.[16] Among other alternatives, the Commission proposed eliminating the then-existing limitation on the number of stations that could be owned by any single entity, and incrementally raising the rule's audience reach cap to 50 percent of television households.[17] The Telecom Act, which abolished the numerical ceiling on station ownership and raised the audience reach limitation to 35 percent[18], was adopted before the Commission could complete this proceeding.

CBS respectfully submits that, in carrying out Congress' mandate to review the continued necessity of its ownership rules -- including those recently revised pursuant to the direction of the Telecom Act[19] -- the Commission cannot ignore its repeated findings that the national television ownership rule is unnecessary to protect competition or diversity, and hinders broadcasters from achieving economic efficiencies. And while adoption of the Commission's 1995 proposal incrementally to raise the national audience reach limitation to 50 percent would obviously be preferable to retention of the existing rule, there is no need to follow a gradualist approach in this area. Total repeal of the national television ownership rule is fully justified by

---

[16] See, Further Notice of Proposed Rule Making, MM Docket Nos. 91-221 and 87-8, 10 FCC Rcd 3524, 3566-67 (1995) ("Further Notice").

[17] Id. at 3586.

[18] Telecommunications Act of 1996, Section 202(c)(1).

[19] Notice at ¶2.

the economic evidence already before the Commission, would provide important public benefits, and would produce no public detriments.

B. Repeal of the National Ownership Rule Would Not Adversely Affect Competition in Any Market.

The FCC has indicated that television broadcasters compete in several economic markets: the market for delivered video programming (i.e., competition for viewers), the local and national advertising markets, and the program production market.[20] The national ownership rule is irrelevant to competition and diversity in markets that are local in geographic scope, including, among those hypothesized by the Commission, the delivered video programming market and the local advertising market.[21] The acquisition of a single television station in Cleveland, for example, does not diminish competition or diversity in any relevant local economic market in Cleveland, regardless of the number of other localities in which the acquiring company may also own stations. In its 1984 review of the multiple ownership rules, the Commission stressed "the lack of relevance of a national ownership rule to the availability of diverse and independently owned radio and TV choices to individual consumers in their respective local markets."[22]

---

[20] Further Notice, supra, 10 FCC Rcd at 3535-3546.

[21] See, Further Notice, supra, 10 FCC Rcd at 3560-62; An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-Ownership Rules, Economists Incorporated (May 17, 1995) at 80-82.

[22] Multiple Ownership, supra, 100 FCC 2d at 19.

The national ownership rules are relevant to appropriately defined national markets in which broadcast stations participate. In order to assess the impact of the Commission's ownership rules on competition in both national and local markets, CBS and three other major broadcasters in 1995 commissioned an extensive study from Economists Incorporated.[23] That study decisively shows that the relevant national markets are sufficiently unconcentrated that repeal of the national ownership rules could have no more than minimal impact upon them.

Thus, for example, the Commission has proposed defining the national advertising market as including broadcast network, syndication and cable network advertising, but excluding broadcast and cable national spot advertising.[24] Since the national advertising market so defined excludes time sold to national advertisers by individual broadcast stations -- i.e., national spot sales -- elimination of the rule would have no impact on the number of competitors in the national advertising market, and thus could not affect it. A more realistic definition of the national advertising market would include national spot sales along with a host of other media, such as national radio networks, magazines and newspapers. As demonstrated by the Joint Economic Study, the resulting product market is so enormously competitive and diverse as to render rules limiting national ownership completely unnecessary. Thus, according to the Joint

---

[23] An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-Ownership Rules, Economists Incorporated (May 17, 1995) ("Joint Economic Study").

[24] Further Notice, supra, 10 FCC Rcd. at 3541-42. The Commission also indicated that "perhaps" cable MSOs should be included among the suppliers of national advertising. Id. at 3542.

Economic Study, the Herfindahl-Hirschman Index ("HHI")[25] for an appropriately defined product market, based on national sales, is a remarkably low 134.[26] And even a national advertising market containing only video media -- i.e., the Commission's proposed market plus national spot -- yields an HHI of only 850.[27]

With respect to the national market for video programs, it is possible, though highly improbable, that repeal of the national ownership rules would permit the formation of station groups large enough to bid on the national exhibition rights for programming. That market is currently highly competitive.[28] No one firm has a sizable share of purchasers' total expenditures on video programming, and nothing even remotely approaching market power on the buying side of the video program production market could be achieved by any firm, even if it were to acquire a station in every local television market. Indeed, as the Joint Economic Study observes, the number of full-power commercial television stations in the United States is so large that if eight hypothetical group owners each owned one station in local markets with a combined population of 80% of the country's television households, there would still be a sufficient number of

---

[25] The Herfindahl-Hirschman Index is a widely-accepted measure of ownership concentration. The Joint Department of Justice/Federal Trade Commission Horizontal Merger Guidelines ("DOJ/FTC Merger Guidelines") use an HHI threshold of 1800 to identify markets in which further inquiry is justified. However, an examination of merger challenges by either federal agency would show that it is a rare case indeed where the post-merger HHI does not exceed 2200.

[26] Joint Economic Study at 28, Table 4.

[27] Id.

[28] The national video program market is currently at a low level of concentration, with an HHI estimated roughly at less than 800 when program expenditures are broken out by individual firms. Joint Economic Study at 42-43.

stations left over for nine more groups to achieve 24% coverage of television households. Measured by DMA household coverage, the HHI for broadcast television stations alone in the absence of national ownership caps cannot exceed 831.[29] The effect that the unlikely emergence of such large groups would have on concentration in this market would be minuscule.

The Joint Economic Study notes that a station group which purchases rights to a program for a number of its stations in a single transaction (but, of course, less than national rights) may be able to obtain that program on more favorable terms than would be available to a single-station purchaser.[30] This result, however, is attributable to cost-saving efficiencies (such as the reduction of transactional costs) that the group purchaser is able to offer to the program's distributor, rather than to any market power on the part of the station group. As the Study observes, the existence of such efficiencies in program distribution are beneficial to the public and to advertisers, and should be encouraged, not obstructed, by public policy.[31]

C. Repeal of the National Rule Would Have No Adverse Effect on Diversity

The fact that a media outlet located in a particular community is or is not jointly owned with sources in other markets has no bearing on the diversity of viewpoints available to that community. Accordingly, as the Commission observed in 1984, "a national [television station ownership] rule is irrelevant to the number of diverse viewpoints in any particular community."[32]

---

[29] Id. at 61.

[30] Id. at 41-42.

[31] Id. at 42.

[32] Multiple Ownership, supra, 100 FCC 2d at 25.

In its 1992 decision relaxing limits on radio station ownership, the Commission similarly stressed that

> "[w]ith respect to viewpoint diversity, the immediate frame of reference for most consumers is the local area in which they live and work. In other words, listeners in San Francisco, St. Louis and Philadelphia each perceive program and viewpoint diversity in terms of the ideas available to them locally, regardless of what ideas are available in other broadcast markets."[33]

Repeal of the national ownership rule can have no adverse effect on diversity in any intellectual market.

D. Repeal of the National Rule Would Provide Many Public Benefits.

It is argument enough against preemptive structural limits on television station ownership that market conditions have rendered such limits unnecessary for the protection of competition or diversity. It is also the case, however, that repeal of the national ownership rules is likely to promote the Commission's statutory goal of promoting "the best practicable broadcast service" to the public. The more efficient grouping of stations that would be permitted by repeal would promote marketplace economies which, in the highly competitive environment of broadcasting, are most likely to translate into improved programming and generally enhanced use of the broadcast spectrum.

---

[33] Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2766 (1992) ("Radio Ownership").

1. Enhancing the Viability of Free, Over-The-Air Television.

The continuing fractionalization of the television audience, and the increasing competition from cable and other rivals, underscore the importance of allowing television broadcasters to achieve effective allocation of resources and to realize the efficiencies that group ownership can provide. The Commission has noted many respects in which group ownership of stations provides opportunities for cost savings through the sharing of various services and other economies. The CBS Owned television stations have realized such savings in the following areas:

- joint financial, legal, research and other administrative and support operations;
- joint purchases of equipment (e.g., cameras and sound equipment);
- joint purchases of services (e.g., programming consultants, ratings services);
- joint negotiation for exhibition rights to syndicated programming;
- fluidity in the allocation of scarce human resources, with frequent movement of on-air and managerial personnel among various CBS Owned stations, and in the allocation of used equipment;
- self-representation of the CBS Owned stations in the national spot sales market.

In addition, each CBS Owned station benefits from the experience and expertise of CBS management and personnel -- a benefit of group ownership which permits skilled and successful television owners to bring their talents and resources to more markets, improving the capabilities and performance of additional stations.[34] We believe that the extension of these cost-saving efficiencies throughout the broadcast television business can contribute significantly to its ability to compete for first-quality programming with subscriber-funded rivals.

2. Improved Program Quality.

The Commission observed in 1984 that group owned stations have tended to do "a superior job of responding to viewer demand for news,"[35] as compared with individually owned stations, and concluded that the efficiencies provided by greater group ownership would result in various service improvements to the community, particularly with respect to news and informational programming.[36] The Commission has repeatedly affirmed these findings.[37]

---

[34] Multiple Ownership, supra, 100 FCC 2d at 45.

[35] Id. at 31.

[36] Id. at 44-46.

[37] See, e.g., Amendment of Section 73.3555 of the Commission's Rules, 4 FCC Rcd 1741, 1746-50 (1989) ("TV-Radio Cross-Ownership) (discussing the many public interest or consumer welfare benefits of group ownership). In its 1992 decision relaxing the then-existing national and local ownership limits for radio, the Commission relied heavily on its experience with television stations for its conclusion that greater consolidation could increase the variety of programming available to the public, including local news and public affairs programming. Radio Ownership, supra, 7 FCC Rcd at 2766.

From the earliest days of television, the stations owned by CBS and Westinghouse Broadcasting -- now joined together in the CBS Station Group -- have emphasized news and public affairs in their programming schedules. The substantial investments of time and of human and financial resources which the Group continues to make in news and public affairs demonstrate that this commitment remains strong today. But the value of group ownership is also reflected in other forms of programming. Multiple station licensees may call on the combined economic resources of a station group to support original programming production, and a variety of other programming services. The sharing of personnel resources within a station group enhances each station's access to program production expertise and can produce overall cost reductions which permit resources to be redirected to programming.

The existence of large station groups offers similar advantages to the distributors of first-run syndicated programming. Instead of being compelled to send sales staff to visit multiple television stations in more than 200 markets, the presence of large groups allows syndicators to make sales presentations to multiple stations at the same time. This also lets distributors know earlier in the process whether a particular project is viable, and what adjustments might be necessary to increase its marketability. Through greater efficiency in the sales process, production companies are able to devote more attention and resources to the development of first quality product.

The process of launching a first-run syndicated program is further streamlined when a production company is aligned with a large station group. For example, the development of the hour-long drama, PENSACOLA, WINGS OF GOLD, by CBS's production and syndication unit, Eyemark Entertainment, was spurred by the expressed need of many of the CBS Owned television stations for a program to fill the hour leading into their prime time Saturday night schedules. With clearances in many of the country's major markets assured, Eyemark was able quickly to begin production of the program. Similarly, the CBS Owned television stations are committing time in several key markets to test run a new Eyemark series, JACKIE COLLINS' HOLLYWOOD, this summer, and are contributing to the program's production costs. By providing a platform to test a series in a large portion of the country without the necessity of a vastly more costly national launch, large station groups can encourage the development of additional and varied syndicated fare.

****

More than a decade has passed since the Commission proposed to phase out entirely its limits on the number of television stations which could be owned by a single entity. Although convinced at that time that complete repeal of the rule would benefit the public interest, and "would not contravene [its] traditional policy objectives of promoting diversity and preventing undue economic concentration,"[38] the Commission nonetheless concluded on reconsideration that the rule's total elimination could trigger "an abrupt and disruptive restructur[ing] of the national broadcasting industry,"[39] and therefore stepped back from the course of eventual total repeal upon which it had originally embarked.

---

[38] Multiple Ownership Reconsideration, supra, 100 FCC 2d at 97.

[39] Id.

As recently as 1995, the Commission once more concluded that "liberalization of the national ownership limits would not have an adverse impact on the competitiveness of [economic] markets," and that "national broadcast ownership limits ... ordinarily are not pertinent to assuring a diversity of views to ... the American public."[40] Once again, however, the Commission expressed concern that changes in the national television ownership rule "should be incremental in order to avoid significant dislocation in the television industry."[41] As a possible means of implementing this objective, the Commission proposed that the national audience reach limitation might be raised by five percent every three years, until a final cap of 50 percent was reached.[42]

Given the clear mandate of Section 202(h) of the Telecom Act -- and the Commission's repeated findings over a fourteen year period that the national television ownership rule does not serve the public interest -- it would be manifestly arbitrary and capricious for the Commission to fail to take some action concerning the rule in this proceeding. Adoption of the Commission's 1995 proposal incrementally to raise the national audience limitation to 50 percent would at least be a step in the direction of reducing the tension between the Commission's repeatedly expressed views concerning the lack of utility of the rule and its continued retention. The Commission's preference for gradualism in this area notwithstanding, however, we strongly

---

[40] Further Notice, supra, 10 FCC Rcd at 3566-67.

[41] Id. at 3567.

[42] Id. at 3568.